

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

Terry Philips dba TK Enterprises

Washington County, Iowa

ADMINISTRATIVE ORDER

NO. 2012-AQ-06

NO. 2012-WW-10

TO: Terry Philips
TK Enterprises
1605 Riverside Road
Riverside, Iowa 52327-9209

I. SUMMARY

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements: Relating to appeal rights:

Mark Heiderscheid, Field Office #6
Iowa Department of Natural Resources
1023 West Madison
Washington, IA 52353
Phone : 319/653-2135

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone : 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Appeal, if any, addressed to:

Director, Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B,

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Division III, Part 1 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this Order.

III. STATEMENT OF FACTS

1. Terry Philips is a paint contractor who operates a painting and sandblasting operation known as TK Enterprises from his residence located at 1605 Riverside Road in Riverside, Iowa. Mr. Philips paints both on-site and off-site.

2. On February 15, 2011, DNR Field Office 6 received a complaint stating that Mr. Philips sandblasts and paints at 1605 Riverside Road in Riverside, Iowa. The complainant indicated that dust from the sandblasting operation was blowing across the road. The complainant indicated that Mr. Philips pushes the sand into the road ditch.

3. On February 17, 2011, Mark Heiderscheit, DNR Field Office 6 environmental specialist, and Kurt Levetzow, DNR Field Office 6 environmental specialist senior, investigated the complaint. No one was present at Mr. Philips's residence at the time of the inspection. Mr. Levetzow and Mr. Heiderscheit walked around the property and observed an area by a shed on the north side of the property where it appeared sandblasting was being done outside. The area outside the shed was covered with several inches of sand and hoses and a tub were visible inside the shed. On the west side of the building there was a partially enclosed generator. On the south side of the property there was a building where it appeared painting was taking place. There were various types of solid waste around the building, including empty paint buckets. Mr. Levetzow and Mr. Heiderscheit observed oils, paint solvent and thinner, batteries and other material stored outdoors uncovered. A card was left requesting that Mr. Philips contact DNR Field Office 6. Later in the day, Mr. Philips contacted Mr. Heiderscheit. Mr. Heiderscheit explained to Mr. Philips what they had observed when they walked around the property. When asked how much paint is used in a day, Mr. Philips explained that most of the painting was done off-site. But when he does paint on-site, the amount of paint varies. The previous day he had used two gallons and on another occasion he used five gallons of paint. Mr. Philips stated that the two drums with sample tags on the racks outside of the building contained paint thinner. Mr. Heiderscheit explained that Mr. Philips would need an air quality construction permit and possibly a storm water permit.

4. On February 24, 2011, DNR Field Office 6 sent Mr. Philips a letter documenting the findings from the February 17, 2011 investigation. The letter required Mr. Philips do the following: 1) by April 1, 2011, submit an air quality construction permit application or proof of exemption; 2) record daily paint usage; 3) maintain daily records for 18 months and have them available for review; 4) obtain and maintain Material Safety Data Sheets for all materials; 5) ensure that proper control equipment is in place prior to venting emissions to the outdoors; 6)

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ensure that control equipment meets proper capture efficiency; 7) document the type of the paint guns used; 8) ensure that emissions are vented through the proper stack; 9) ensure reasonable precautions are implemented during sand blasting to minimize fugitive emissions; 10) ensure that all solid waste is properly disposed of; 11) notify the DNR of spills within six hours of onset or discovery; 12) by April 1, 2011, submit a storm water permit application or a no exposure certification form; and 13) by April 1, 2011, submit a description of how the requirements have been met.

5. Mr. Philips failed to submit the permit applications and other requested information by April 1, 2011. On April 7, 2011, DNR Field Office 6 sent a letter to Mr. Philips regarding the requirements listed in the February 24, 2011 letter. Mr. Philips was given until April 22, 2011 to submit the permit applications and other requested information.

6. Mr. Philips failed to submit the permit applications and other requested information by April 22, 2011. On May 5, 2011, Mr. Heiderscheit visited Mr. Phillips's residence. No one was present at the time of the visit. On May 5, 2011, DNR Field Office 6 sent another letter to Mr. Philips regarding the requirements listed in the February 24, 2011 letter. Mr. Philips was given until May 27, 2011 to submit the permit applications and other requested information. The letter indicated if the permit applications and other requested information were not submitted by May 27, 2011 that the matter may result in a referral to the Legal Services Bureau for further enforcement.

7. Mr. Philips failed to submit the permit applications and other requested information by May 27, 2011. On June 28, 2011, Mr. Heiderscheit visited Mr. Philips's residence. Hector Delgado, employee of Mr. Philips, was present and was preparing a livestock trailer for painting. On June 28, 2011, DNR Field Office 6 sent a letter to Mr. Philips regarding the requirements listed in the February 24, 2011 letter. Mr. Philips was given until July 15, 2011 to submit the permit applications and other requested information. The letter indicated that the matter was being referred for enforcement review.

8. Mr. Philips failed to submit the permit applications and other requested information by July 15, 2011. On October 28, 2011, Mr. Heiderscheit visited Mr. Philips's residence. No one was present at the time of the visit. On October 31, 2011, DNR Field Office 6 issued a Notice of Violation letter to Mr. Philips for failing to obtain an air quality construction permit for the painting and for failing to obtain a storm water permit. Mr. Philips was given until November 30, 2011 to submit the permit applications. The letter indicated that the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of

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air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Pursuant to Iowa Code sections 455B.133 and 455B.134, 567 IAC 22.1(1) was established, which requires that a person who constructs, installs, reconstructs or alters equipment or control equipment that is not exempt must first obtain an air quality construction permit from the DNR. During a visit by DNR Field Office 6 it was determined that Mr. Phillips was painting on site without a construction permit and that the paint usage varied from no usage to over five gallons a day. The above-stated facts demonstrate noncompliance with these provisions.

3. 567 IAC 22.8(1)(b) allows for facilities with paint booths that spray one gallon or less per day to be exempt from all requirements of 567 IAC 22 and obtain a permit by rule. This provision requires that a certification must be submitted to the DNR and daily records of paint usage must be kept. 567 IAC 22.8(1)(c) allows for facilities with paint booths that spray more than one gallon but never more than three gallons per day to be exempt from all requirements of 567 IAC 22 and obtain a permit by rule. This provision requires that a certification must be submitted to the DNR, daily records must be kept, and the emissions must be vented through a stack that is at least 22 feet tall. The daily records must be kept for a period of 18 months. 567 IAC 22.8(1)(d) states that facilities with paint booths that spray more than three gallons per day are not eligible for the permit by rule and must apply for a construction permit as required by 567 IAC 22.1(1). Mr. Philips has failed to submit any documentation to the DNR Air Quality Bureau and has failed to seek the assistance of the Air Quality Bureau; therefore he remains out of compliance with air quality requirements.

4. 40 Code of Federal Regulations Part 63 Subpart HHHHHH (6H)—Emission standards for hazardous air pollutants for area sources: paint stripping and miscellaneous surface coating operations was adopted by reference at 567 IAC 23.1(4)(eh). Due to Mr. Philips's painting operations of mobile equipment, his facility is subject to 6H. Mr. Philips has failed to submit any documentation to the Air Quality Bureau to evaluate which requirements of Subpart 6H apply to Mr. Philips's operations.

5. 567 IAC 64.3(1) states no person shall operate any wastewater disposal system without an operation permit issued by the Director. During DNR Field Office 6's site visit on February 17, 2011, oils, paint solvents and thinners, paint buckets, batteries, and other materials were observed being stored outdoors. DNR Field Office 6 made several requests that Mr. Philips obtain a storm water permit — General Permit 1. To date, Mr. Philips has not obtained a storm water permit — General Permit 1. The above facts indicate a violation of this provision.

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V. ORDER

THEREFORE, the DNR orders Mr. Philips to do the following:

1. Contact Sarah Piziali, DNR Air Quality Bureau Construction Permit Engineer (515) 281-3762, within 30 days of receipt of this Order, to request a permit determination regarding the painting operations that occur at Mr. Philips' property and to request a 6H requirement determination for the facility;
2. Submit the air quality construction permit application or permit by rule documentation for the painting operations to the DNR Air Quality Bureau within 30 days from the permit determination noted in the above paragraph;
3. Submit the required 6H documentation to the DNR Air Quality Bureau and perform the required recordkeeping or equipment updates within 30 days from the 6H determination noted in the above paragraph;
4. Submit a storm water permit application for General Permit 1 to the DNR Storm Water Division within 30 days of receipt of this Order; and
5. Pay an administrative penalty in the amount of \$7,000.00 within 60 days of receipt of this Order; subject to appeal rights stated in Section VII.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions for air quality violations. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a \$7,000.00 penalty. The administrative penalty assessed by this Order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take

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enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to obtain the proper air quality construction permit or permit by rule for the paint booth and failure to obtain a storm water permit has allowed Mr. Philips to save time and money. He has been able to avoid recordkeeping requirements and other possible permit requirements. Additionally, Mr. Philips has been able to delay the costs associated with obtaining the proper air quality construction and storm water permits. Mr. Phillips has been able to delay the costs of installing proper air quality control equipment for the paint booth and storm water controls. Mr. Philips has avoided paying the yearly storm water fee of \$175.00. It is estimated that Mr. Philips has gained an economic benefit of at least \$1,000.00 and that amount is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. An air quality construction permit is required to be obtained prior to construction in order to allow for the prior review of plans and specifications pertaining to a proposed contaminant source. The purpose of this review is to determine if the source will meet all applicable emission limits and operating requirements. This review ensures that the interests of the citizens of Iowa in clean air are protected. A storm water permit is required to ensure that that water quality standards are being met. Failure to obtain air quality and storm water permits threatens the integrity of the regulatory program because compliance with these regulations is required of all persons in this state. Based on the above considerations, \$3,000.00 is assessed for the gravity factor.

Culpability – Mr. Philips has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. DNR Field Office 6 notified Mr. Philips on at least four occasions of the air quality and storm water permitting requirements and Mr. Philips continues to operate without the required permits. This is blatant disregard for the regulations. Based on the above considerations, \$3,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

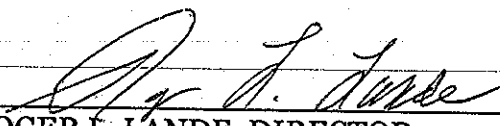
Pursuant to Iowa Code sections 455B.138 and 455B.175 and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case

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hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.191.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 15th day of
March, 2012.

Air Quality Facility 92-05-008; Kelli Book; Field Office 6; EPA; I.B.1, and VII.A.1